IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JOHDPUR

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United India Insurance Co. Ltd. Vs. Smt. Hidayat Khatun. & Ors.

S.B. CIVIL MISC. APPEAL NO.1988/2006

Smt. Hidayat Khatun & Ors. Vs. Abdul Rahim & Ors.

S.B. CIVIL MISC. APPEAL NO.1943/2006.

Against the award dated 13.07.2006 made by the Motor Accidents Claims Tribunal [Additional District Judge (Fast Track) No.4], Jodhpur in Claim Case No.730/2004

Date of Order :: 09th April 2007.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. Anil Bachhawat, for the appellant in CMA No.1988/2006 (respondent No.3 in CMA No.1943/2006).

Mr. S.K. Sankhla, for the appellants in CMA No.1943/2006 (respondents Nos. 1 to 7 in CMA No.1988/2006)

Mr.Mukul Singhvi, for the respondent No.9 in CMA No.1988/ 2006 (respondent No.2 in CMA No.1943/2006).

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BY THE COURT:

These two appeals, CMA Nos.1988/2006 and 1943/2006, filed respectively by the insurance company and by the claimants against the same award dated 13.07.2006 made by the Motor Accidents Claims Tribunal [Additional

District Judge (Fast Track) No.4], Jodhpur in Claim Case No.730/2004 have been heard together and are taken up for disposal by this common order.

By the impugned award made against the non-applicants, the Tribunal has allowed compensation in the sum of Rs.2,51,000/- to the wife, five children and mother of the vehicular accident victim Ata Mohammad, about 30 years of age and said to working as a Khalasi on the truck involved in accident. While the claimants contend in their appeal that the amount of compensation is too low and inadequate, the non-applicant No.3 insurance company contends in its appeal that the vehicle was not insured with it on the date of accident, i.e. 08.11.1987, and the Tribunal has erred in not considering the material aspects of their defence.

The claim application aforesaid was filed by the claimants on 27.09.2001 initially against the driver and owner of a truck bearing registration No. RNM 7824 with the submissions that the deceased Ata Mohammad was working as Khalasi on the said truck on a salary of Rs.1,500/- per month getting other allowances at Rs.30/- per day; that the accident occurred on 08.11.1987 at about 9:30 a.m. on Bikaner-Jaisalmer route at 6 kilometers from Diyatara when the said truck driven by the non-applicant No.1 Abdul Rahim rammed into another truck bearing registration No. RRC 646;

that because of the accident, several occupants of the truck RNM 7824 sustained injuries; and that Ata Mohammad and so also one Sikander Khan succumbed to the injuries sustained in this accident.

The vehicle owner in his reply pointed out that the truck in question was insured with the United India Insurance Company by his bankers, Bank of India, Chopasni Road, Jodhpur by making payment of premium of Rs.4,264/- from his account for insurance from 30.01.1986 to 29.01.1987 under Insurance Policy No.24/1/77; and the same was got renewed under Policy No.30/1/570 from 30.01.1987 to 29.01.1988; and that the insurance cover note and policy were not available with him but the insurer was required to be impleaded as party. Thereafter the claim application was amended and the present appellant (United India Insurance Company Limited) was impleaded as non-applicant No.3 in its capacity as insurer of the vehicle in question. The appellant insurance company in its reply raised the objection that the accident occurred prior to coming into the force of the Amendment Act of 1994 to the Motor Vehicles Act, 1988 and, because the cause of action accrued under the Act of 1939, the claim application was liable to be rejected. The insurer asserted that the vehicle in question was not insured with it on the date of accident, i.e. 08.11.1987 and raised other objection about violation of policy

conditions. The Tribunal framed the following issues in this case on 26.08.2004,-

> "1. आया प्रश्नगत वाहन ट्रक संख्या आर एन एम 7824 के चालक विपक्षी संख्या-01 ने दिनांक 8/11/1987 सुबह 9.30 बजे बीकानेर-जैसलमेर आम सड़क पर दियातरा के 6 किमी दूर गुरूद्वारे के पास उक्त वाहन को उपेक्षा/उतावलेपन व तेजगति से चलाकर दुर्घटना कारित की, जिसके परिणामस्वरूप अता मोहम्मद की मृत्यु कारित हुई ?
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> 2. आया विपक्षी संख्या-01 तब विपक्षी संख्या-02 के नियोजन में होकर उसी के हितार्थ एवं लाभार्थ कार्य नहीं कर रहा था ?
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> 3. आया वक्त दुर्घटना विपक्षी संख्या-01 चालक के पास वैध एवं प्रभावी डी/एल नहीं था, क्या बीमा कम्पनी अपने दायित्व से मुक्त हो सकती है, नहीं तो इसका प्रभाव ?
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> 4. आया दावेदार अपने दावे में अंकित प्रश्नगत राशि या अन्य कोई न्याय सम्मत राशि पा सकते है, हॉ तो कौन कौन दावेदार कितनी कितनी राशि किस किस विपक्षी से एवं किस प्रकार से पा सकते है ?"

On 05.10.2004, the claimants examined PW-1 Smt. Hidayat Khatun and PW-2 Umardeen in support of their case. The claimants moved an application under Order 11 Rule 14 of the Code of Civil Procedure with the submissions that the insurance company alleged that the vehicle in question was not insured with it whereas the vehicle owner has asserted such insurance coverage and, therefore, it was

necessary to get the record produced from the insurance company. For the appellant raising no objection, the application was allowed and the appellant was directed to produce the concerning documents. On the next date, i.e. 25.10.2004, a witness DW-1 V.N. Mathur, Branch Manager of the above-mentioned Bank was examined, who asserted that the premium for insurance was paid by the Bank and produced documentary evidence in support of his deposition. The matter was thereafter placed further for non-applicants' evidence but was adjourned on 29.11.2004 and 17.12.2004 because the Presiding Officer was on leave.

However, on 12.01.2005, an application earlier moved on behalf of the appellant insurance company for directions to the non-applicant No.2 or the claimants to produce the driving licence or to supply the necessary particulars was taken up and the Tribunal observed that such document being not in power and possession of the vehicle owner, it was not appropriate to pass any order for its production. The Tribunal also observed that the evidence of both the parties was already over and the matter was fixed for final arguments. The appellant insurance company filed photo copies from its Motor Premium Register that were placed on record and then the matter was posted for final arguments; and after substantial number of adjournments, ultimately the final arguments were

heard on 12.07.2006 and the Tribunal pronounced the award on 13.07.2006.

In issue No.1, the Tribunal held the accident to have occurred for rash and negligent driving of the truck in question. In issues Nos. 2 & 3, the Tribunal observed that no cogent evidence was adduced by the insurer that the non-applicant No.1 was not driving the vehicle in question in the employment and for the purposes of the non-applicant No.2; or that the driver was not holding a valid and effective driving licence and, therefore, decided these issues against the appellant for want of evidence. In issue No.4, the Tribunal put an estimate on the income of the deceased at Rs.1,500/- per month and, after deducting one-third on personal expenditure, with application of multiplier of 18 assessed pecuniary loss at Rs.2,16,000/-. The Tribunal further allowed Rs.30,000/- towards non-pecuniary loss and Rs.5,000/- towards funeral expenses and in this manner awarded compensation in the sum of Rs.2,51,000/- together with interest @ 7.5% per annum from the date of filing of the claim application to the claimants.

After hearing learned counsel for the parties and after perusing the record, this Court has noticed fundamental lacunae and shortcomings in the trial and decision of the present claim case; and, while the impugned award cannot be

sustained, the matter deserves to be remanded to the Tribunal.

It has been the bone of contention as to whether the vehicle in question was insured or not with the appellant insurance company on the date of accident. The insurer in its reply has raised a specific plea to that effect. Unfortunately, the Tribunal has framed the issues in a generalised manner as are usually framed for determination of questions ordinarily involved in such claim cases. However, no specific and definite issues in relation to the material plea taken by the insurer have been framed. Perusal of the award in question makes it clear that the Tribunal has not even adverted to the material objections of the insurance company like the aforesaid one about it being not the insurer on the date of accident and other one about the operation and effect of the provisions of the Motor Vehicles Act, 1939 as the accident occurred on 08.11.1987.

Then, the record shows that on 12.01.2005 the case was specifically posted for evidence of the non-applicant but the Tribunal assumed that the evidence of the parties was over and the matter was placed for final arguments after rejecting an application moved by the appellant insurance company. In this case, only a witness DW-1 V.N. Mathur, Branch Manager of the aforesaid Bank, had been examined

but not by the insurance company. The said witness appeared from the Bank concerned and deposed about having made payment of premium to the appellant insurance company. Obviously, the said witness appeared in support of the case of the vehicle owner.

In view of the order of remand proposed to be passed in this case, this Court would not like to make comments on the merits of the case but the plea going to the root of the matter ought to have been considered and decided by the Tribunal, after affording adequate opportunity of evidence to the parties.

Assessment of quantum of compensation has also been made by the Tribunal in a routine manner without considering the relevant factors like the one that the deceased had a comparatively larger family of about 8 persons including himself to support and it is not necessary that in every claim for compensation made under Section 166 of the Act, a deduction on the personal expenditure of the deceased is required to be made at one-third minimum.

For the Tribunal omitting to decide relevant questions involved in the case, the matter deserves to be remanded for determination of such questions on the objections raised by the appellant insurance company. Quantification of compensation having also been made in a routine manner and looking to the surrounding circumstances, this Court is of

opinion that it shall be in the interest of justice if the award in question is set aside in toto and the matter is remanded wholesome.

As a result of the aforesaid, both the appeals are allowed to the extent indicated above. The impugned award dated 13.07.2006 made by the Motor Accidents Claims Tribunal [Additional District Judge (Fast Track) No.4], Jodhpur in Claim Case No.730/2004 is set aside and the matter stands remanded to the Tribunal that shall frame issues requisite for determination of the questions involved in the case and after affording adequate opportunity of leading evidence to the parties, shall decide the claim application on merits in accordance with law.

The parties shall appear before the Tribunal on 07th May, 2007. Record be sent to the Tribunal immediately.

There shall be no orders as to costs of these appeals.

It is made clear that this court has not pronounced on the merits of case in any manner and no observation herein shall be construed as any expression of opinion by this court on the merits of the plea sought to be raised by either of the parties.

(DINESH MAHESHWARI), J.

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